



"Brooks, Patrick J."
<PBrooks@ssd.com>
06/09/2006 10:56 AM

To Alan.Tenenbaum@usdoj.gov, piercejc@michigan.gov,
ebessey@kdhe.state.ks.us, Betsey.Streuli@deq.state.ok.us,
JMorgan@atg.state.il.us
cc Elise.Feldman@usdoj.gov, Catherine
Garypie/R5/USEPA/US@EPA, LPutman@milbank.com,
TKreller@milbank.com, MONROEB@michigan.gov,
bcc

EPA Region 5 Records Ctr.



366974

Subject RE: Custodial Trust Agreement

...either and Act of Congress, or a declaration of W.

So does adding "excluding Agency Beneficiaries" after non-prevailing party do it?

From: Alan.Tenenbaum@usdoj.gov [mailto:Alan.Tenenbaum@usdoj.gov]
Sent: Fri 6/9/2006 11:42 AM
To: piercejc@michigan.gov; ebessey@kdhe.state.ks.us; Betsey.Streuli@deq.state.ok.us; Brooks, Patrick J.; JMorgan@atg.state.il.us
Cc: Elise.Feldman@usdoj.gov; Garypie.Catherine@epamail.epa.gov; LPutman@milbank.com; TKreller@milbank.com; MONROEB@michigan.gov; ReichelB@michigan.gov; cgibbons@szd.com; Winters, Karen; Lerner, Stephen D.; bruce.kugler@epa.state.il.us
Subject: Re: Custodial Trust Agreement

Sorry but there is no way my office will approve that. There is a difference between being authorized by law and being prohibited by law. There are laws providing for this in very limited situations. Going beyond these would violate the antideficiency act. You would need to get an act of congress to go with this language.

Sent from my BlackBerry Wireless Handheld

Sent Using U.S. DOJ/ENRD BES Server

-----Original Message-----

From: PBrooks@ssd.com <PBrooks@ssd.com>
To: Tenenbaum, Alan (ENRD) <ATenenba@ENRD.USDOJ.GOV>; JMorgan@atg.state.il.us
<JMorgan@atg.state.il.us>; piercejc@michigan.gov <piercejc@michigan.gov>; ebessey@kdhe.state.ks.us
<ebessey@kdhe.state.ks.us>; Betsey.Streuli@deq.state.ok.us <Betsey.Streuli@deq.state.ok.us>

CC: Feldman, Elise (ENRD) <EFeldman@ENRD.USDOJ.GOV>; Garypie.Catherine@epamail.epa.gov
<Garypie.Catherine@epamail.epa.gov>; TKreller@milbank.com <TKreller@milbank.com>;
LPutman@milbank.com <LPutman@milbank.com>; cgibbons@szd.com <cgibbons@szd.com>;
ReichelB@michigan.gov <ReichelB@michigan.gov>; MONROEB@michigan.gov <MONROEB@michigan.gov>;
SLerner@ssd.com <SLerner@ssd.com>; KWinters@ssd.com <KWinters@ssd.com>; bruce.kugler@epa.state.il.us
<bruce.kugler@epa.state.il.us>

Sent: Fri Jun 09 11:21:19 2006

Subject: RE: Custodial Trust Agreement

Section 6.4 is prefaced with the language "Absent applicable law to the contrary." Doesn't that do it?

From: Alan.Tenenbaum@usdoj.gov [<mailto:Alan.Tenenbaum@usdoj.gov>]

Sent: Thu 6/8/2006 5:07 PM

To: JMorgan@atg.state.il.us; piercejc@michigan.gov; ebessey@kdhe.state.ks.us; Betsey.Streuli@deq.state.ok.us; Brooks, Patrick J.

Cc: Garypie.Catherine@epamail.epa.gov; Elise.Feldman@usdoj.gov; TKreller@milbank.com; LPutman@milbank.com; cgibbons@szd.com; ReichelB@michigan.gov; MONROEB@michigan.gov; Lerner, Stephen D.; Winters, Karen; bruce.kugler@epa.state.il.us

Subject: RE: Custodial Trust Agreement

At a minimum, Jim is right about section 6.4. The Government is generally not permitted to pay attorney's fees. Please make an exception for any governmental entities. Thanks. Alan.

-----Original Message-----

From: JMorgan@atg.state.il.us [<mailto:JMorgan@atg.state.il.us>]

Sent: Thursday, June 08, 2006 3:56 PM

To: PBrooks@ssd.com; piercejc@michigan.gov;

Betsey.Streuli@deq.state.ok.us; ebessey@kdhe.state.ks.us

Cc: Tenenbaum, Alan (ENRD); Garypie.Catherine@epamail.epa.gov;

MONROEB@michigan.gov; ReichelB@michigan.gov; LPutman@milbank.com;

TKreller@milbank.com; KWinters@ssd.com; SLerner@ssd.com;

cgibbons@szd.com; bruce.kugler@epa.state.il.us

Subject: RE: Custodial Trust Agreement

I am available.

Several comments for Illinois:

Section 2.6(b): All but the last sentence of this subparagraph refers to a "disposition" of property while this sentence refers to a "distribution" and I do not believe that is correct. Also, it is not clear if this authorizes distribution of the cash in a Custodial Trust Account to the Plan Trust before the "new owner" completes the Environmental Action. If it does, it may prompt more challenges to proposed distributions.

Section 2.6(c): Could you insert "except no State shall be required to take title to or possession of any Property" at the end of this

provision?

Section ^12: I am having difficulty reconciling the use of "exclusive" in the first sentence with the other sentences in this provision. Can it be deleted?

Section 4.7: We are comfortable with the Trustee hiring other persons to do work but believe allowing the Trustee to "delegate performance of services and fulfillment of responsibilities under this Agreement" is overbroad.

Section 5.4: Illinois continues to object to this provision.

From: Brooks, Patrick J. [<mailto:PBrooks@ssd.com>]
Sent: Thursday, June 03, 2006 2:02 PM
To: Jonathan Pierce; Morgan, James L.; Betsey Streuli; ebessy@kdhe.state.ks.us
Cc: Garypie.Catherine@epamail.epa.gov; Brian Monroe; Robert Reichel; LPutnman@milbank.com; TKreller@milbank.com; Winters, Karen; Lerner, Stephen D.; cgibbons@szd.com; Alan.Tenenbaum@usdoj.gov
Subject: RE: Custodial Trust Agreement

I suggest we plan on having a conference call tomorrow to discuss any comments the States may have to the CTA. Does 11 EDT work for the primary representative of each State?

Patrick

From: Jonathan Pierce [<mailto:piercejc@michigan.gov>]
Sent: Thursday, June 03, 2006 2:53 PM
To: James L. Morgan; Betsey Streuli; ebessy@kdhe.state.ks.us; Brooks, Patrick J.
Cc: Garypie.Catherine@epamail.epa.gov; Brian Monroe; Robert Reichel; LPutnman@milbank.com; TKreller@milbank.com; Winters, Karen; Lerner, Stephen D.; cgibbons@szd.com; Alan.Tenenbaum@usdoj.gov
Subject: Re: Custodial Trust Agreement

Patrick,

Thanks for providing the draft custodial trust agreement. I've preliminarily reviewed it with MDEQ and will be forwarding our comments regarding its form and substantive provisions as soon as I can. I understand that you wish to present it without objection to the court sometime Monday, but please keep in mind that we didn't see the latest version until first thing this morning.

Call or e-mail if you have any questions.

Jonathan Pierce

>>> 'Brooks, Patrick J.' <PBrooks@ssd.com> 6/7/2006 10:20:57 PM >>>

Attached is a revised version of the Custodial Trust Agreement. I am sending a clean version only because the document has been extensively negotiated by the DOJ, William West's counsel, the Debtors and the Committee resulting in numerous changes. Thus, we encourage you to read it fresh from start to finish.

The Debtors think it is a well balanced document for all parties concerned and hope you will find it agreeable. Significant hours went into the recent edits, so I would hazard to guess that I can speak for DOJ, Mr. West and his counsel, the Debtors and the Committee in requesting that you focus on material issues, if any, in providing comments. The Debtors would like to focus all their efforts going forward on finalizing the settlement agreements with the States.

We would appreciate it if you could acknowledge by COB tomorrow that you have no objections to the form of agreement, or provide any comments that you may have. We appreciate your prompt attention to this matter. We would like to file a notice on Monday indicating that there are no objections to (i) the form of agreement, (ii) Mr. West serving at Custodial Trustee, and the (iii) Funding of the Administration Custodial Trust Account, which was increased by \$200,000 and, you'll see in the revised document, a mechanism was added to allow the Custodial Trustee to retain up to 15% of Residual Interests to apply towards administrative costs of the Custodial Trust under certain circumstances. The Debtors agreed to these changes because the initial calculations did not provide for payment of real property taxes and certain minimal maintenance costs not constituting Environmental Costs. Further, the EPA believed that the number of hours the Debtors estimated that would be required of the Custodial Trustee were too low. While the Debtors disagree with the EPA's estimated hours, the 15% provision was added as an accommodation in an effort to alleviate any concerns over the adequacy of the administrative funding.

The Debtors appreciate your continued efforts in working under a tight timetable to permit the Debtors to consummate their Plan for the benefit of all stakeholders.

Regards,

Patrick J. Brooks
Squire, Sanders & Dempsey L.L.P.
4900 Key Tower
127 Public Square
Cleveland, Ohio 44114
(216) 479-8370
(216) 479-8776 (Fax)
pbrooks@ssd.com
www.ssd.com

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your computer. Thank you.



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pbrooks@ssd.com
www.ssd.com

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